

REMARKS

Claims 1-6, 8-10, 13-17 and 38-50 are pending.

All pending claims are rejected.

Applicant proposes to cancel claims 1-6, 8-10, 13-17, 38-40, 48 and amend claims 41, 42, 43, 49 and 50as provided in the Listing of Claims. Thus, after entry of the proposed amendments, claims 41-47, 49 and 50 will remain as being allowable.

Claim Rejections under 35 U.S.C. § 103

Claims 1-6, 8-10, 13-17 and 38-50 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. published patent application No. 2004/0185204 to Fay et al. ("Fay") in view of U.S. patent No. 4,105,431 to Lewis et al. ("Lewis") and further in view of U.S. patent No.6,528,556 to Herbst ("Herbst"). For the reasons presented below, this rejection is moot.

In making the rejection, the examiner states the following on page 5 of the Office Action:

Lewis et al. discloses the claimed biocide levels except the disclosure only teaches isothiazolones as biocides, Herbst et al. show that **chlorinated phenols and copper sulfate** are equivalent structures known in the art (col. 5, lines 50-67) for use as biocides.

Applicant proposes to cancel claims 1-6, 8-10, 13-17, 38-40 and 48. Thus, the rejection with respect to claims 1-6, 8-10, 13-17, 38-40 and 48 is moot. With respect to the rejection of the remaining claims 41-47 and 49-50, Applicant proposes to amend the independent claims 41 and 42 to recite that the "antifungal agent comprises a mixture of methylene-bis-thiocyanate and dodecylguanidine hydrochloride as active ingredients" and no longer recites chlorinated phenols, copper sulfate nor isothiazolones as possible antifungal agent. Thus, the combination of Fay,

Lewis in view of Herbst, even if they could validly be combined, does not disclose the invention claimed in the amended independent claims 41 and 42. Accordingly, withdrawal of the rejection of claims 41 and 42 is requested.

Claims 43-47 and 49-50 depend from the amended claim 42. Thus, these dependent claims are also allowable over the cited references Fay, Lewis and Herbst. Therefore withdrawal of the rejection of claims 43-47 and 49-50 is also requested.

Examiner also rejects claim 1-6, 8-10, 13-17 and 38-50 under 35 U.S.C. § 103(a) as being unpatentable over Fay in view of Lewis and further in view of U.S. patent No. 6,090,399 to Ghosh et al. (“Ghosh”) and as evidenced by Furnacecompare.com and Progress-energy.com. For the reasons presented below, the cited references do not disclose the invention recited in the claims amended as proposed herein.

The independent claim 41, amended as proposed herein, requires an **“antifungal agent in the amount in weight of between 12-24 ppm of the dry weight of the cellulosic facing, which is effective in achieving no observable fungi or mildew growth when tested in accordance with the ASTM C-1338 test method,** wherein said antifungal agent comprises a mixture of methylene-bis-thiocyanate and dodecylguanidine hydrochloride as active ingredients.” The independent claim 42, amended as proposed herein, requires “at least one antifungal agent present in an amount in weight of between 12-24 ppm of the dry weight of the cellulosic facing, . . . **the amount of said antifungal agent is sufficient for the cellulosic facing to pass ASTM C-1338.**” According to the specification, passing ASTM C-1338 is defined as “no observable growth” with respect to fungal growth. (Specification at paragraph [0027]).

In contrast, the isothiazolin compounds disclosed in Lewis do not disclose such antifungal effectiveness. Specifically, the Table XIV of Lewis in column 32 shows results of mildewstatic test results for five sample compounds. Three of the five samples exhibited growth of mildew and only two of the five samples exhibited no growth. (Lewis at Table XIV, data columns Growth of Chaetmum and globosum). Thus, Lewis does not disclose an antifungal agent with the effectiveness as required by the proposed amended claim 41. Therefore, Lewis does not disclose an antifungal agent with the antifungal effectiveness as required by the amended claims 41 and 42.

Furthermore, the Ghosh reference does not correct the deficiency of Lewis because the teachings of Lewis and Ghosh may not be combined as suggested by the Examiner. The teachings of Lewis and Ghosh may not be combined because there is no motivation to combine the teachings of these two references. Ghosh discloses using “biologically active compounds” in 2-50 wt. % (20,000 to 500,000 ppm). (Ghosh at column 15, lines 23-27). Ghosh defines “biologically active compounds” as a compound capable of inhibiting or controlling the growth of microorganisms at a locus including industrial fungi. (Ghosh at column 16, lines 6-12). Thus, Ghosh teaches using biologically active compounds in much larger quantity than required by amended claims 41 and 42 in order to inhibit the growth of fungi and one of ordinary skill in the art would not have found it obvious at the time the present application was filed to substitute the isothiazolin compounds in Lewis with a mixture of methylene-bis-thiocyanate and dodecylguanidine hydrochloride in the low quantity required by amended claims 41 and 42.

Therefore, Fay, Lewis and Ghosh whether taken singly or in combination, do not disclose the invention required by claims 41 and 42, amended as proposed herein. Withdrawal of this rejection is kindly requested.

Claims 43-47 and 49-50 depend from claim 42, which is allowable over the cited references. Therefore, claims 43-47 and 49-50 are also allowable over the cited references. Withdrawal of the rejection of claims 43-47 and 49-50 is kindly requested.

Conclusion

In view of the above, Applicant believes that the proposed amendments to the claims place the present case in allowable form. Reconsideration of the present application, withdrawal of the rejections, entry of the proposed amendments and allowance are kindly requested.

Respectfully submitted,

Dated: November 27, 2006

/Won Joon Kouh/
Won Joon Kouh
Registration No. 42,763
609-631-2435

PTO Customer No. 08933
DUANE MORRIS LLP